Bank of America reaches $16 billion mortgage fraud settlement

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Bank of America (BoA) is finalizing a settlement with the Department of Justice (DOJ) over claims that the bank palmed off worthless mortgages to investors, according to the *Wall Street Journal.*

The purpose of the anticipated deal is to protect BoA and its executives from lawsuits. As in other deferred prosecution agreements, the Obama administration is charging a misleading sum (a record $16 or $17 billion at face value) in exchange for what amounts to immunity. The arrangement will ensure that no banker at BoA will be prosecuted for the bank's role in the criminal practices that crashed the world economy.

In the lead-up to the financial crisis, BoA and its subsidiaries sold hundreds of billions of dollars of toxic mortgage assets to investors. The bank knew that the actual value of these mortgage- backed securities was just a fraction of what it sold them for.

The rumored deal between the BoA and DOJ follows in the footsteps of several such agreements between the major banks and the Obama administration. It is expected to have the same terms.

In November 2013, the DOJ worked out a $13 billion settlement with JPMorgan Chase. Better Markets, a non-profit Wall Street watchdog, stated that the agreement gave the bank "blanket civil immunity for years of alleged pervasive, egregious and knowing fraudulent and illegal conduct that contributed to the 2008 financial crash and the worst economy since the Great Depression."

News outlets are reporting on the unprecedented price tag affixed to the BoA agreement, reportedly somewhere between $16 and $17 billion. In fact, Bank of America will pay a fraction of this fine.

As the *Washington Post* noted in 2012, "Corporations can write off any portion of a settlement that is not paid directly to the government as a penalty or fine for violation of the law. A majority of the settlements that federal regulators announced in the past year include some form of restitution that is eligible for a tax deduction."

According to the *Journal's* anonymous source, $9 billion of the amount is tax deductible.

If the write-off is successful, Bank of America will get this sum, more than half of the total agreement, back within a year. After passing through the DOJ this money will eventually end up in the hands of the US Treasury—the agency which gave trillions of dollars to the big banks. *Forbes* magazine reports that some of the money could also go to states and other government agencies.

Robert Willens, director of a tax accounting firm, spoke to the *Post* about the practice of writing off fines. He described it as "companies financing their penalty payments on the backs of taxpayers."

The leftover $7 to $8 billion comes in the form of mortgage relief that will likely follow the format of past deals.

In its record settlement with JPMorgan Chase, the DOJ allowed the bank to choose its own independent monitor to oversee its homeowner relief. JPMorgan Chase chose to spend this money on first-lien principal reductions, extinguishing second liens (debt which is subordinate to the repayment of another debt), interest reductions, refinancing, and anti-blight revisions, such as bulldozing homes after buying "blighted" homes on the cheap.

Referring to these measures, *Salon Magazine* writes, "Almost none of this represents a real penalty for the bank."

"[JPMorgan Chase] performs anti-blight procedures annually in its normal course of business. Principal forbearance has minuscule long-term cost. Second liens that typically cannot be recouped are worthless to a bank, and it's hard to say it 'costs' anything to extinguish them. The bank is even credited for writing down principal on loans owned by mortgage-backed securities investors, paying off their fine with other people's money (the other people in this case being the very investors they defrauded!)."

The magazine concludes, "all the measures to help struggling homeowners actually *help* JPMorgan Chase in the long run, because it makes financial sense to modify loans rather than foreclose."

Talks between the bank and DOJ had stalled in June of this year. It is widely reported that Bank of America had offered to be fined $13 billion and did not budge from that number.

This changed when the Manhattan US District Judge Jed Rakoff issued a court order last Wednesday that forced the bank to pay $1.27 billion for Countrywide Financial's previous mortgage fraud. Countrywide is now a subsidiary of BoA. Reportedly, the same day the DOJ threatened BoA. The Department told the bank that a New Jersey attorney was poised to file a lawsuit against the bank if it did not increase its accepted fine.

The DOJ has not launched any criminal prosecutions in connection with the sub-prime mortgage fraud at the center of the 2008 crash. Attorney General Eric Holder told the Senate in 2013 that it is "difficult to prosecute" the major banks because if the DOJ did bring a criminal charge it would "have a negative impact on the national economy, perhaps even the world economy…"

Both the banks and the DOJ benefit from avoiding the costs of a lawsuit, which can be drawn-out and expensive. It is also common for bank lawyers, in charge of protecting banks from lawsuits, to later be hired as top lawyers in the Security and Exchange Commission (SEC) and the DOJ. For instance, Robert Khuzami was in charge of Deutsche Bank America's legal team during its sale of toxic mortgage assets; later he was the head of the enforcement division of the SEC.

Writing about the expected deal between the BoA and DOJ, Better Markets declares, "If this information is not publicly disclosed, then the settlement amount, whether it sets a record or not, is meaningless and once again no one will be able to evaluate the Wall Street bank's conduct or if the supposed 'punishment' is appropriate for the crime. It will also, conveniently, prevent the public from evaluating DOJ's conduct and claims. It will again result in no accountability on Wall Street or at DOJ."